DISTRICT OF COLUMBIA
OFFICE OF ADMINISTRATIVE HEARINGS
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Washington, DC 20002

DISTRICT OF COLUMBIA DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS Petitioner, v. LAURA ELKINS and JOHN ROBBINS Respondents	Case No.: CR-C-05-800012 (formerly Case No. 2004-OAD-006)

FINAL ORDER

I. Introduction

Pursuant to Section 6(b) of the Office of Administrative Hearings Establishment Act of 2001, as amended, D.C. Official Code §§ 2-1831.01 *et seq.*, on October 1, 2004 this administrative court began to hear adjudicated cases formerly heard by the District of Columbia Department of Consumer and Regulatory Affairs' ("DCRA") Office of Adjudication ("OAD"). D.C. Official Code § 2-1831.03(b)(2). The present case was pending before the OAD prior to October 1, 2004, and has been filed with the Office of Administrative Hearings ("OAH") as a commenced case.[1]

[1] By Order dated August 23, 2005, this administrative court determined that DCRA filed the commenced case notice with OAH on January 6, 2005. Under then-OAH Rule 2802.2, a commenced case notice was required to be filed within 120 days after OAH assumed jurisdiction to hear cases formerly heard by the filing agency. Since the case was commenced in a timely manner, I denied Respondents' Motion to Dismiss this case based on DCRA's alleged untimely filing of the commenced case notice.

On December 17, 2003, the Government had issued to Respondents Laura Elkins and John Robbins a Notice of Proposed Revocation. The Notice of Proposed Revocation proposed to revoke six building permits issued to Respondents, as set forth in more detail later in this Final Order, and to require Respondents to submit a new building permit application to encompass all of the construction improvements to their home. The Notice of Proposed Revocation is the subject of the hearing request in this case.

On September 5, 2005, Respondents filed a Motion to Suppress Evidence ("Motion to Suppress") resulting from a search of their home and seizure of items within the home, conducted by the Government on March 27, 2003. Respondents alleged that the Government's actions violated their rights under the U.S. Constitution, and various statutes, regulations and court rules, and Respondents sought to suppress all evidence resulting from that search and seizure. On October 14, 2005, the Government filed its Opposition, stating in essence that the March 27, 2003 actions did not violate any rights of Respondents, and that suppression of the evidence was not appropriate.

A hearing was held on the Motion to Suppress on November 4, 2005. On November 22, 2005, this administrative court issued an Order on Motion to Suppress, ruling on the arguments of the parties. In essence, this Order determined: (1) the Government's search, pursuant to an administrative search warrant, of Respondent's home for evidence of unlawful construction work, did not violate Respondent's right to be free from unreasonable searches and seizures; (2) the Government substantially complied with the statutory, regulatory and court rule requirements for an administrative search warrant; but (3) the application for warrant only sought, and the warrant itself only authorized, the search of the premises and not the seizure of any items within the premises. Therefore, evidence pertaining to Government officials' observations of the

interior of Respondents' home was not suppressed; evidence pertaining to items that were not in plain view but seized during the search, was suppressed.

On May 23 and 24, 2006, the first part of the evidentiary hearing was held in this matter. The Government presented its case-in-chief and rested. The parties stipulated into evidence all of the exhibits pre-marked in the case. The following witnesses testified for the Government: Toni Cherry, Building Codes Inspector for the Office of Planning ("OP"); David Maloney, Historical Preservation Officer and former Acting Program Director, OP; Denford Boney, Supervisor of Plumbing, Building Land Regulation Administration ("BLRA"); and Phillip Thomas, Building Inspector, BLRA.

Pursuant to a motions schedule, on July 21, 2006, Respondents filed their Motion for a Directed Decision at the Close of the Petitioner's Case-In-Chief. On September 18, 2006, the Government filed its Opposition to Respondents' Motion for a Directed Decision.

By Order on Motion for Directed Decision dated September 27, 2006, I granted the Motion in part, denied it in part, and scheduled further proceedings. A hearing was held on October 26, 2006 to address one issue still pending. On November 21, 2006, I issued an Order on Remainder of Motion for Directed Decision that denied the Motion on the remaining issue. The specific charges that were dismissed and that remained under consideration, as a result of the Motion for Directed Decision, are described in the next section of this Final Order.

The remainder of the hearing was held on November 29 and 30, 2006. Respondents presented their case and rested. The Government presented its rebuttal case and rested. The following witnesses testified for Respondents: Co-Respondent John Robbins; and Vincent Ford, former Program Manager and Chief Building Inspector, BLRA. William Crews, Zoning

Administrator; and Mr. Maloney, recalled, testified for the Government in rebuttal. Several additional exhibits were admitted into evidence, two for Respondents (298A and 254) and five for the Government (102B, 103A, 103B, 105A and 118). A list of all exhibits entered into evidence is included as an Appendix.[2]

Pursuant to a motions schedule, the parties filed contemporaneous written closing arguments on February 23, 2007. Upon consideration of the entire record of this case, I will first summarize the charges initially filed and now remaining under consideration after directed decision, and I will then make findings of fact and conclusions of law.

II. Summary of the Charges

A. Initial Charges

The initial charges against Respondents alleged in essence:

Charge I. Respondents provided false statements and misrepresentations of fact in their March 19, 2001 application to perform building construction on their Property, 20 Ninth Street, N.E., resulting in the issuance of Building Permit B436647. 12 DCMR 108.9.

Spec. A. Respondents applied for the initial permit, filing a single architectural drawing showing partial elevations. They indicated that the work would involve no change in the proposed number of stories, no change in the gross floor area, and no change in the volume of the building. In March 2003, Respondents refused entry for a Governmental inspection after official requests were made. Pursuant to a search warrant executed on March 27, 2003, the

[2] John E. Scheuermann, Esq., represented Respondents throughout the proceedings before OAH. Initially, Doris A. Parker-Woolridge, Esq., represented the Government. Beginning with the Motion to Suppress, Stephanie B. Ferguson, Esq., represented the Government, and Lori S. Parris, Esq., also appeared for the Government to argue a motion during the hearing on May 24, 2006. Beginning with the November 29, 2006 hearing, Dennis M. Taylor, Esq., represented the Government.

Government discovered private construction plans showing future work that exceeded the scope of permits issued for the Property.[3]

Spec. B. On or about November 28, 2001, Respondents obtained Permit B440544, amending B436647, for construction of two replacement walls to match the height and width of original walls. Respondents failed to disclose their demolition plans or substantial changes in the height and width of the replacement walls.

Spec. C. On or about April 26, 2002, Respondents obtained Permit B444561, amending B436647. This permit allowed construction of interior, non-structural partition walls only, of the addition. During the search on March 27, 2003, inspectors saw a finished bathroom on the second floor, that had been designated as unfinished on Respondents' proposed plans.

Charge II. Respondents' construction work violated conditions set forth in Building Permits B436647 and B443341, and did not comply with approved plans and other information Respondents filed with the Government.

Spec. A. On or about March 8, 2002, Respondents applied for an amendment to B436647, and submitted plans showing that the proposed storage lofts met the one-third size restrictions. Permit 443341 was issued for interior construction to remove flooring above a future kitchen and to convert the space to storage not to exceed one-third of the area of the floor below. On May 17, 2002, a Government inspector observed the construction and determined it was nonconforming. The inspector issued a Notice of Violation and Notice to Abate, requiring Respondents to submit a new permit application within 15 days, because the change in volume varied from the original plans. During the March 27, 2003 search, inspectors found that Respondents had constructed a second floor that covered more than one-third of the floor space and included a bathroom, both conditions being in variance with the permit application and permit.

[3] To the extent that the charges referred to documents that were seized during the March 27, 2003 search of the Property, the admission of the documents was suppressed following a hearing on Respondents' motion to suppress evidence. However, Government officials were permitted to testify concerning their observations and to present photographs taken of the Property during the search.

B. Charges Dismissed and Remaining after Government's Case-in-Chief

In the Order on Motion for Directed Decision, and the Order on Remainder of Motion for Directed Decision, I made factual determinations, assuming the evidence in the light most favorable to the Government, and determined the following:

- With regard to Charge I, Respondents' Motion for a Directed Decision was granted as to the general allegations, and Specifications A and C. Respondents' Motion was denied as to Specification B.

- With regard to Charge II, Respondents' Motion was granted as to all allegations that they have performed construction that exceeded the scope of all building permits, except for: (1) two windows installed on the second floor and flooring exceeding one-third of the floor space below, suggesting the construction of a living space on that floor, in violation of Permit B444341; (2) demolition of one exterior wall, in violation of Permit B440544; and (3) exterior walls exceeding the height restrictions of Permit B440544. In addition, with regard to Charge II, Respondents' Motion as to their alleged failure to comply with the NOV issued on May 17, 2002 was denied.

Thus, the following charges remained under consideration, after the two Orders were issued on the Motion for Directed Decision:

Charge I:

Spec. B. On or about November 28, 2001, Respondents obtained Permit B440544, amending B436647, for construction of two replacement walls to match height and width of original walls. Respondents failed to disclose their demolition plans or substantial changes in the height and width of the replacement walls.

Charge II. Respondents' construction work violated conditions set forth in Building Permits B436647 and B443341, and did not comply with approved plans and other information Respondents filed with the Government. [as to the following only: (1) two windows installed on the second floor and flooring exceeding one-third of the floor space below, suggesting the construction of a living space on that floor, in violation of Permit B444341; (2) demolition of one exterior wall, in violation of Permit B440544; and (3) exterior walls exceeding the height restrictions of Permit B440544]

Spec. A. On or about March 8, 2002, Respondents applied for an amendment to B436647, and submitted plans showing that the proposed storage lofts met the one-third size restrictions. Permit 443341 was issued for interior construction to remove flooring above a future kitchen and to convert the space to storage not to exceed one-third of the area of the floor below. On May 17, 2002, a Government inspector observed the construction and determined it was nonconforming [as stated above]. The inspector issued a Notice of Violation and Notice to Abate, requiring Respondents to submit a new permit application within 15 days, because the change in volume varied from the original plans. During the March 27, 2003 search, inspectors found that Respondents had constructed a second floor that covered more than one-third of the floor space and included a bathroom, both conditions being in variance with the permit application and permit.

To the extent that Charge II referred to other alleged non-conforming construction, the allegations have been dismissed.

III. Findings of Fact

In the Order on Motion to Dismiss, I made certain findings of fact, assuming the evidence in the light most favorable to the Government. OAH Rule 2801.2; D.C. Superior Court Civil Rule 50(a); *Schechter v. Merchants Home Delivery, Inc.,* 892 A.2d 415, 422 (2005). Those factual findings are not conclusive as to the remaining charges. In this Final Order, based upon the testimony of the witnesses, my evaluation of their credibility, and the exhibits admitted into evidence, I now make the following findings of fact:

A. The Parties and the Property

Respondents, husband and wife, are the owners of 20 9th Street, N.E. (the "Property"), a residential lot located in the Capitol Hill Historic District, a designated historical district pursuant to the District Historic Landmark and the Historic District Protection Act, D.C. Law 2-144 (the "Act"). Respondents purchased the Property in 2000.

The Property's rectangular building is a two-story house in the front section, with at least two additional sections that are one story.[4] The building abuts 9th Street, N.E., at its narrow front entrance, and it abuts a public alley to the rear. Petitioner's Exhibit ("PX") 101; Respondent's Exhibit ("RX") 292. The length of the Property includes a middle section with a kitchen, and a rear section with a garage or studio. On the left side from the viewpoint of 9th Street, the building abuts the building of Respondents' neighbor in the front section; behind the neighbor's building is a party wall that extends the remainder of the property line. On the right side, there is a narrow strip of land, and then the side of another neighbor's building. The parties refer to the party wall side of the house as the north side, and the other side as the south side.[5]

Respondent Mr. Robbins is the assistant director of the U.S. Department of the Interior – Office of Cultural Resource Stewardship and Partnerships. In this capacity, he awards grants to state preservation offices and evaluates national landmarks. RX 257. Mr. Robbins has specialized knowledge of landmark and historical building preservation issues. There was no evidence that the Government treated him favorably or unfavorably because of his position.

[4] Mr. Robbins testified that the Property contains four sections. However, the witnesses and evidence generally have referred to three sections, and I will refer to these three sections for ease of discussion in the remainder of this Order. I am not discounting Mr. Robbins' testimony.

[5] The house location survey, PX 101; RX 292, shows that the party wall side is actually the west side. I will use the parties' designations.

There was no evidence that Mr. Robbins publicized his position or attempted to gain advantage because of it, aside from his use of personal knowledge and expertise.

In all building application permits, Respondents prepared their own architectural drawings to show their proposed construction. Respondents relied on Mr. Robbins' expertise in historic landmarks and Ms. Elkins' artistic abilities.

At all times relevant to this case, any building improvement to a designated historical building that impacted the exterior structure of the building was subject to approval by both DCRA and the OP's Historical Preservation Office ("HPO").[6] On a date prior to 2001, the HPO was transferred from DCRA to OP. However, OP was not granted any statutory authority to enforce the Act.

By Memorandum of Agreement ("MOA") dated May 17, 2001, Joint Exhibit ("JX") 404, DCRA and OP agreed that DCRA would delegate certain functions to OP. Under Section Four of the MOA, these functions include: (1) surveillance of historic landmarks and sites, and buildings and sites in historic districts; (2) periodic inspections and monitoring of such buildings and sites for non-permitted alterations, demolitions and new construction; (3) requirement or recommendation of stop-work orders, notices of violation, and notices of civil infractions; (4) access to the Hansen System, a computer database for effective enforcement of applicable laws; (5) read-only access to live permit records; (6) complete access to DCRA BLRA's permit archives; and (7) use of DCRA Investigator Badge #210, and Identification Card. DCRA also agreed to ratify and approve enforcement actions taken by OP between October 1, 2000 and the date of the MOA. Under the MOA Section Five - A, the Inspector designated under clause 7 of

[6] The HPO is also known as the Historical Preservation Division or "HPD." In this Order, the HPO name is used.

Section Four was granted authority to issue stop-work orders, notices of violation, or notices of infraction after observing a violation subject to the Inspector's authority. DCRA's Building Inspection Division ("BID") was granted opportunity to review all notices and orders to ensure that each meet legal requirements. The Inspector who issued the citation would attend any hearing as a witness for the Government.

Pursuant to the MOA, Toni Cherry of OP was the designated Inspector assigned to perform the functions listed in Sections Four and Five. Ms. Cherry had previously worked for DCRA as an Inspector for the HPO. After the May 17, 2001 MOA went into effect, Ms. Cherry carried DCRA Badge No. 210, and its corresponding identification. As of May 23, 2006, she carried DCRA Badge No. 214. JX 400. This Badge identifies her as a Historic Building Inspector.

In addition, on an unknown date, Mayor Anthony A. Williams authorized Ms. Cherry to cross-enforce "provisions of the D.C. Code and the D.C. Municipal Regulations as prescribed in the Memorandum of Agreement ['MOA II,' between various District agencies that enforce laws pertaining to building codes and public health and welfare], dated January 11, 2002." JX 403. MOA II, dated January 11, 2002, JX 402, in pertinent part authorized DCRA inspectors to take enforcement actions for: "Erection, construction, reconstruction, contrivance, or alteration of any building or structure or part thereof, without obtaining a building permit," pursuant to D.C. Official Code § 6-641.09.

In summary, at all times relevant, DCRA had authority to enforce the Building Construction Codes, D.C. Official Code §§ 6-1401 *et seq.*, and the Act, D.C. Official Code §§ 6-1101 *et seq.* Through the MOA, JX 404, the MOA II, JX 402, and the Mayor's Order, JX 401,

OP was granted limited investigatory powers to enforce the Act. Ms. Cherry was specifically delegated cross-enforcement powers under the Act, as the OP investigator identified to perform investigations under the Act, including the power to issue Notices of Violation and Notices of Infraction for violations of the Act that she observed.

In general, during the period, 2001-02, the operation of the DCRA BLRA, in issuing building permits, was somewhat informal. At that time, DCRA officials seldom provided written notices of hearing rights with stop-work orders and notices of violation, and only occasionally provided oral notices of hearing rights. In addition, DCRA officials exercised considerable discretion, in waiving requirements of the Building Codes by not demanding permit applicants to comply with all provisions. This style of operation was not present in the OP/HPO. In addition, various officials from both agencies were conflicted as to whether Respondents' construction projects violated the provisions of the Act, and of their neighbors' rights under the Act. The operational challenges at DCRA, and the conflicts between officials, impacted on Respondents' building permit applications in numerous ways, including: (1) DCRA (and Zoning and HPO) officials approved applications that were later second-guessed by other officials in DCRA and the HPO; (2) DCRA officials did not require a demolition permit when Respondents replaced their south wall; (3) DCRA officials did not provide hearing notices with many of their orders; and (4) DCRA officials often gave conflicting orders to Respondents with regard to their right to proceed on the building permits.[7]

B. The Initial Application/ Permit B436647

[7] For the findings in this paragraph, I rely upon the testimony of Mr. Ford, which is generally consistent with the entire record of this case.

After Respondents purchased the Property in 2000, they sought to make extensive repairs and improvements to the Property. Initially, they wanted to add a second and third floor to the house. However, they scaled back their project after learning that the likelihood of approval was slim and that the process would be lengthy.

Toye Bello, the District's Acting Zoning Administrator, informed Respondent Ms. Elkins during this time that the Property was already non-conforming under existing zoning because the percentage of the improved area of the lot already exceeded the maximum percentage allowed. Any proposed addition would require Zoning Board approval, which could take six months to one year. RX 289. Mr. Bello further advised Ms. Elkins that replacement of the existing flat roof with a sloped roof would fit into the category of a replacement roof/alteration, and not an addition or new construction. Therefore, Mr. Bello represented to Ms. Elkins that this project would not require Zoning Board approval.

On March 19, 2001, Respondents applied with DCRA for a building permit to: (1) replace the roof; (2) replace an exterior fence; and (3) install garage doors. PX 102; RX 201. Respondents stated that the work would be for alteration and repair, and that there would be no change to the proposed gross floor area of the building, the overall volume of the building, or the number of floors. PX 102 and RX 201, at pp. 1-2, questions 11, 17, 45, 46 and 60. On March 21, 2001, Respondents filed other required documents with DCRA. PX 102, pp. 6-11; RX 202 and 205.

In pertinent part, Respondents sought to install a new roof with a steeper slope, in order to make the attic above the kitchen higher. The walls would have to rise to meet the higher roof. However, this work would require the total volume of the interior structure to increase, contrary

to Respondent's answer to Question 60 on the application. RX 220. The proposed work was accurately depicted in the architectural drawings provided by Respondents, in that they showed a change in the pitch of the roof. PX 102A. Those drawings did not include any reference to scale, and did not have side views.

Respondents sought guidance from DCRA, Zoning and OP in answering the questions on the application. Ultimately, they filled out the application themselves, and Mr. Robbins signed the application and attested to its contents.

The application was reviewed by T. Luke Young of OP. Mr. Young was hired by OP in January 2001, and the review of this application was one of his first responsibilities. Mr. Young reviewed the architectural drawings provided by Respondents. PX 102A. Mr. Young had access to the accurate information about the proposed work, as well as the inaccurate information on the application that the volume of the floor space would not change. Mr. Young approved the application for OP/HPO.

On March 30, 2001, the HPO approved the application, with two restrictions not relevant here. The District Zoning Department approved it on April 12, 2001, and the Structural Engineer approved it on April 27, 2001. PX 102, p. 5. On that last date, the Government issued Building Permit No. B436647, authorizing Respondents to: (1) replace the roof; (2) replace the fence; and (3) install garage doors. PX 102, p. 1; RX 208.

With regard to zoning, the Property was not zoned to allow a second floor above the kitchen (in the middle) or the garage/studio (in the rear). Permit No. B436647 did not approve any such change, in the understanding of Acting Zoning Administrator Toye Bello. RX 289; RX 290 Motion to Intervene/TRO Hearing Transcript (undated) [hereinafter, "T."] pp. 46-47.

DCRA, OP/HPO, and the Zoning Department did not rely upon Respondents' inaccurate answers on the application, in light of the fact that the drawing provided by Respondents accurately reflected the scope of the proposed work and the change in volume caused by the raised roof. Vincent Ford, the Chief Building Inspector – DCRA, and Mr. Bello, the Acting Zoning Administrator, specifically did not rely upon the answers to these questions, but rather relied upon the drawings provided by Respondents. RX 288 and 289. There is no evidence as to the basis for Mr. Young's actions on behalf of OP.[8]

C. Initial Construction Work/ Stevens Litigation/ Additional Permits

Construction began in the fall of 2001. During that work, the chimney collapsed, causing the roof and south wall portion of the Property to fall, although some Government officials suspected that the south wall portion had been intentionally demolished by Respondents' contractors.[9] Shortly after this, several adjacent property owners, including Mr. Robert Kim Stevens, complained about the improvement work on the Property. Respondents did not file an application for a demolition permit, nor did any Government official request such a permit.

On November 13, 2001, Mr. Stevens sent a letter to Mr. Bello, the Acting Zoning Administrator, requesting revocation of Building Permit B436647. RX 209. Mr. Stevens complained that Respondents had razed the garage at the rear of the Property and made other nonconforming additions that exceeded the scope of the permit. Mr. Stevens requested that a stop-work order be issued.

[8] I make no finding as to the purpose for Question 60 on the application (to set fees versus to require disclosure from the property owner). The evidence was not conclusive on this issue, and the determination of the issue is not critical to the outcome of the case.

[9] Ultimately, the evidence did not show that demolition had occurred.

On November 19, 2001, Respondents filed an application for building permit to pour concrete slab to replace the floor, as an amendment to Permit B436647. RX 210. This application was approved by OP and DCRA, and Building Permit No. B440371 was issued for the concrete floor on November 19, 2001. PX 104; RX 211.

In the fall of 2001, OP began to develop concerns about Respondents' improvement projects. David Maloney, then the Acting Program Director of the HPO, reviewed the initial drawings and could not ascertain the scope of the work authorized. In light of the neighbors' complaints and the lack of specificity or ambiguity in the application, Mr. Maloney urged DCRA officials to require Respondents to submit a new application for a building permit. Mr. Maloney expressed to other Government staff his particular concern that the elevation of the roof over the mid-section and garage or studio at the rear of the Property was being raised to meet the level of the front, and that this uniform elevation was not consistent with the general character of the historic neighborhood. PX 114 pp. 21-24.

On November 27, 2001, the Government issued a Stop-Work Order as to Permit Nos. B436647 and B440371, instructing Respondents to "Stop all work until I have your revised plans to reflect the partial demolition of your south wall (sec. 111.3) & (sec. 107.2.3)." Respondents did not appeal this Stop-Work Order nor were they advised of their right to appeal.

On November 28, 2001, Respondents filed an application for a building permit to replace walls to rebuild a portion of the north wall – stucco on frame, to amend Permit No. B436647. RX 213. Respondents submitted no plans to show this work. On that date, Mr. Young inspected the Property and found that the south wall was missing. RX 215. On the same date, the Government issued Building Permit No. B440544, authorizing Respondents to rebuild a 10'

portion of north wall and a 22'6" portion of south wall, with the replacement walls to "match original height and width." RX 214. The height and width restrictions were imposed by the OP/ HPO, as a condition of its approval.

According to Mr. Ford's understanding, the 10' and 22'6" dimensions in Permit No. B440544 referred to the length of the walls. RX 290 T. pp. 36-39. According to Mr. Maloney's understanding, Permit B440544 was not internally consistent, in that the original height and width were not consistent with the dimensions provided in the permit. Mr. Maloney also objected to the fact that no drawings were provided with the application for Permit B440544.

The restriction in Permit B440544 imposed by OP/HPO was subject to two interpretations, because the "original height and width" of the walls could refer to: (1) the condition of the walls before the south wall fell; or (2) the height and width authorized by the original permit, B436647. Respondents in good faith had notice and understood that their proposed construction work, shown in their original architectural drawings for Permit 436647, was consistent with the height and width restrictions of Permit B440544.[10]

On behalf of the Zoning Department, Mr. Bello approved the application for Permit No. B440544, with the understanding that it corrected the original permit only to allow for the fact that the walls had crumbled. Mr. Bello and the Zoning Department did not approve any story

[10] The Government argues that this issue turns on whether Permit B440544 was an amendment to the original permit or a substitute for that permit. I do not completely agree. Since the condition was ambiguous, the issue turns on what information was communicated to Respondents with regard to the condition imposed. After considering all the evidence, I conclude that Respondents honestly and reasonably believed that the change in the pitch of the roof (and additional height of the south wall) was authorized by Permit B440544. This belief was consistent with the information they received from Mr. Young, Mr. Ford, and Mr. Bello, and with the fact that the Government did not advise Respondents that their original plan was being rejected. It is also true that, at that time, Mr. Maloney took the contrary position but the record reflects that Mr. Maloney first met with Respondents in early 2002, after the work on Permit B440544 was done.

addition above the kitchen, which would have been a non-conforming use requiring Zoning Board approval. RX 290 T. pp. 46-47.

In December 2001, Mr. Stevens requested a stop-work order because he contended the construction of a second floor greatly exceeded the height of the original walls. The stop-work order was issued on January 17, 2002. RX 232 and 240.

While there is a factual dispute as to whether the actual walls were constructed 10' high or 20' high, c*ompare* RX 232 and PX 114 p. 44 with RX 220 and RX 290 T. pp. 33, 36-39, the overwhelming weight of the evidence shows that the actual construction created a southern wall 20' high, or at least a wall higher than the original wall, as alleged by two neighbors, by the Capitol Hill Restoration Society ("CHRS"), and by Mr. Maloney. Measurements taken by the CHRS showed that the height of the garage or studio area ran from 19.2' to 14.6', in violation of the CHRS's requirement that any wall cannot average more than 15' in height. PX 114 pp. 45-46. In order to create a sloped roof under Respondents' plans, the southern wall would have to be raised.[11]

Denzil Noble, Deputy Administrator of the DCRA BLRA, came to the same conclusion as Mr. Maloney, *i.e.*, that Respondents' construction work exceeded the scope of Permits 436647 and 440544. On March 5, 2002, Mr. Noble issued a letter to Respondents, advising them that they were required to file an application for a revised building permit to reflect work not covered by the prior permits. RX 223. On that same date, the Government issued a Stop-Work Order

[11] I have withdrawn any findings regarding an investigation by Councilmember Sharon Ambrose's office in early 2002. That investigation does not ultimately impact on the decision in this case. Mr. Coburn's conclusions were based on incomplete information, as I discussed in the Order on Motion to Dismiss.

directing Respondents to cease "working out of scope of permit." PX 107; RX 224. That stop-work order was rescinded on the same day by DCRA, over the HPO's objections. RX 232.

On March 8, 2002, Respondents filed an application for a building permit (interior work only) to remove flooring above a future kitchen and convert the area to a storage loft, not to exceed 1/3 of the floor below. PX 103. On that date, the Government issued Building Permit No. B444341 for this purpose. PX 103, p. 1; RX 226. Mr. Bello agreed to this permit on the basis that the creation of a storage loft of this size would not constitute a non-conforming use of the Property.

Mr. Stevens filed two legal actions in the District of Columbia Superior Court: (1) against the District of Columbia for allegedly improperly granting Building Permit 436647; and (2) against Respondents for allegedly performing illegal improvement work on the Property. Mr. Stevens contended that the HPRB was required to approve changes made by Respondents to their Property that were inconsistent both with the building permits issued to them and with the Act. Respondents were granted leave to intervene in the case against the District. At that time, the District defended the propriety of the building permits and asserted that Respondents had fully complied with the permits. RX 290 T. p. 11. Mr. Ford testified that Respondents were in compliance with the permits. *Id. at* p. 32. On the unspecified date of the hearing on Respondents' Motion to Intervene and Mr. Stevens' request for a temporary restraining order ("TRO") against the District, Respondents appeared and presented their position to the presiding judge. The judge denied the TRO, but also stated that Respondents could continue their construction work "at their own peril."

The District took its legal position at trial in support of the validity of the permits and compliance by Respondents with the permits issued. At that time, the OP/HPO took the opposite position on both issues. Mr. Maloney scheduled the matter of Respondents' construction work to be heard by the HPRB on March 28, 2002. The HPRB staff conducted this review over Respondents' objections. RX 230 and 231. The HPRB staff recommended that stop-work orders be issued, and that the building permits be revoked. RX 232. In response, the HPRB itself ordered HPO staff to continue investigating the situation and take any appropriate enforcement measures. RX 233.

On April 9, 2002, the Government issued a Stop-Work Order, directing Respondents to cease working out of scope of permits, as the windows or garage doors were not to specification. PX 108; RX 236. On April 24, 2002, Respondent issued another Stop-Work Order as to the installation of roof skylights without a permit. PX 109; RX 237. These Stop-Work Orders were lifted on April 26, 2002, after the Government conducted two inspections and found no violations. RX 240.

While the Stevens cases were still pending, Respondents filed another application for a building permit on April 25, 2002, to build interior non-structural partition walls at the mezzanine and main floor level. PX 105; RX 238. On April 26, 2002, the Government issued Building Permit No. B444561 that approved this work, subject to the following condition: "The work proposed for the mezz. level will not severely impact the main level should the courts decide that the shell roof must be lowered." PX 105, p. 1; RX 239.

The Stevens cases were settled in approximately June 2002, and they were dismissed with prejudice. The issues determined in the Superior Court were not exactly the same as the issues presented here. The cases were never appealed.

D. The Notice of Violation

On May 17, 2002, the Government, through Mr. Ford, issued a Notice of Violation and Notice to Abate ("NOV") to Respondents, charging them with a violation of 12 DCMR 116.7. PX 111; RX 241. The Government contended that the construction project was inconsistent with Respondents' assertion in their initial application in answer to question 60, PX 102; RX 201, that there was no change to the volume of the building as a result of the proposed construction. The NOV did not include any advice of appeal rights, and Andrew Saindon, Esq., an attorney for the Government, told Respondents that they could not appeal the NOV.

Mr. Ford issued the NOV, based upon a meeting with various officials from DCRA and the HPO shortly after the dismissal of the Stevens cases.[12] BLRA Administrator Gregory Love instructed the officials to find a way to stop this project from going forward. Mr. Ford did not realize at that time that the Government officials who had approved the application for Permit 436647 did not rely upon Respondents' answer to Question 60 in approving the application. Mr. Ford later regretted issuing the NOV because he believed it to be without merit. The NOV was never withdrawn or dismissed.[13]

[12] In their closing argument, Respondents state that the cases were dismissed after this. Mr. Ford testified that the officials met after dismissal. At any rate, the meeting occurred after the cases were over, even if the dismissal orders had not been issued.

[13] Mr. Ford testified credibly to these facts. I disagree with Respondents' contention, and I do *not* find, that the NOV was issued in bad faith. Mr. Ford certainly acted in a good faith belief that the basis for the NOV was valid. The allegation in the NOV, that the answer to Question 60 was not accurate, is factually supported. Government officials had legitimate concerns that the projects violated the Act, even though the initial permit applications had been approved. The primary

Meanwhile, Respondents applied for a building permit to sister 2' x 6' roof joists. The Government issued Permit No. B446508 on June 20, 2002, authorizing this work. PX 106; RX 246. On July 15, 2002, Respondents applied for and received a Plumbing Permit, RX 249, authorizing installation of kitchen and bathroom fixtures and hardware on the first floor.

On September 16, 2002, Respondents filed with DCRA a response to the NOV. RX 252. Respondents stated that they checked off on the initial application that the project was for "Alteration and Repair," rather than "New Building" or "Addition," because the Government's staff (HPO and Zoning officials) had advised them to do so. Respondents stated that they answered "No Change" to application Question 60 (as to change in volume) because there was no new building or addition that would affect the volume. Further, Respondents argued that the drawings that accompanied the initial application clearly showed a change in the volume due to the raised elevation of the roof. Respondents stated that they were not questioned about these answers, and that the Government has been deeply involved in this project. On that same day, Respondents' attorney provided additional drawings to Mr. Maloney showing interior and exterior elevations and current exterior photographs. RX 253. Respondents did not file an appeal of the NOV. RX 280.

By their September 2002 submissions, Respondents complied with the May 17, 2002 NOV in all but one respect: they never applied for a new building permit to replace the existing permits. Respondents chose this tactic, because they took the position that their existing permits were valid and they reasonably believed that, if they submitted a new application, the Government would revoke or withdraw its permission for the construction work they had already

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problem was not bad faith, but rather internal conflict among the officials and tardiness in their actions.

performed. Respondents have consistently maintained the position that the six issued building permits have vested a valuable property right that they are entitled to exercise. Respondents have spent more than $70,000 for improvements based upon the issuance of these permits.

E. HPO/HPRB Actions – Late 2002

In September 2002, HPRB staff members reviewed supplemental plans and photographs showing work in progress at the Property and issued their report on September 26, 2002. RX 255. The original plan, submitted with the original application, showed the front elevation of the house, the alley elevation of the rear garage, a section through the garage, a site plan, and a roof plan. No side elevations were provided. The new plans showed two side elevations and sections through the rear wing of the house and the garage.

The HPRB staff contended that the project, characterized as a roof replacement, in fact was a substantial addition to the historic house and garage or studio. It significantly increased the height, bulk, volume, and gross floor area of the Property. The staff concluded:

> [W]hereas the original property consisted of a dominant historic house with a series of three clearly secondary rear attachments, the property in its altered condition consists of the historic house overburdened by a unitary rear wing of equal or even greater size. The unrelieved north wall is particularly inappropriate in the historic context.
>
> Compliance with the prior permit condition [in B404544, to rebuild the wall portions, with replacement walls to match original height and width] would have ensured a replacement of the original rear wing more nearly in kind, retaining at least the sense of a series of separate rear additions, at a scale more appropriate to a historic rowhouse neighborhood.

RX 255. The staff recommended the requirement of a new permit for remedial work on the middle section of the rear wing that was the lowest part of the house. This remedial work would eliminate the proposed loft over the kitchen.

Respondents filed a response to this report. RX 256. Respondents argued that the Government should have voiced these concerns before the permits were issued, and that all issues raised were determined in Respondents' favor in Mr. Stevens' lawsuits. On or about September 16, 2002, Respondents submitted to the HPRB additional drawings or plans showing the proposed improvements. PX 114 p. 9.

The HPRB held a public hearing on this matter on September 26, 2002.[14] The Board determined in essence that: (1) Respondents had not been entirely open about their improvement plans; (2) there was no single plan or application available that described the entire construction project; and (3) there were concerns as to whether the height of the new construction to the middle and rear portions impacted negatively on the neighborhood. The HPRB ordered Respondents to submit a new application as to their entire project. PX 114 pp. 52-55.

On October 30, 2002, the Government issued a Stop-Work Order ordering Respondents to cease all construction work and submit a complete building permit application to the HPO, following the NOV of May 17, 2002. RX 259. On November 5, 2002, Respondents sent a letter to Mr. Ford, asserting that the Stop-Work Order is invalid, because it did not comply with applicable law. RX 260. Also, Respondents contended that the application Question 60 applied only to new construction and not to alteration and repair projects. In response, the Government issued a new Stop-Work Order on November 13, 2002, that included a citation to 12 DCMR 116.7, which Respondents allegedly violated by performing work that increased the volume of the house. PX 110; RX 262.

[14] The timeline is unclear from the record. The transcript of the September 26, 2002 hearing referenced the HPRB staff report, PX 114 p. 8, but not the reply from Respondents.

In addition, on November 15, 2002, Mr. Ford sent a letter to Respondents indicating that Respondents' response, RX 260, was not considered an appeal of the Stop-Work Orders, and Mr. Ford advised Respondents of their appeal rights. RX 265. On that date, Respondents appealed the October 30 and November 13, 2002 Stop Work Orders. In response, on that same date, Denzil Noble, now Administrator of BLRA, issued a letter rescinding the October 30, 2002 Stop-Work Order. RX 266. The November 13, 2002 Stop-Work Order remained in effect.

In November 2002, Respondents requested permission from the Government to perform certain improvements necessary to secure their home or to provide washer and dryer service. RX 267-273. The Government refused to allow this work, because it wanted to retain leverage to require Respondents to file new building permit applications. RX 274-275. The Government took the position that Respondents had failed to comply with the May 17, 2002 NOV. RX 279.

Inspectors from the HPO and DCRA, including Ms. Cherry, inspected the Property in early December 2002. The inspectors concluded that the rear windows and door were outside the scope of the approved construction work under the permits.

In response to the various communications, David A. Clark, Director of DCRA, issued a letter dated December 23, 2002, denying Respondents' request for relief from the Stop-Work Order. PX 112; RX 280. The basis for the action was that Respondents had failed to comply with the abatement requirements of the NOV. Mr. Clark stated that this decision was a final agency action, and he provided a notice of appeal rights.

Respondents filed an appeal of this Stop-Work Order and the decision by Mr. Clark, to the District of Columbia Board of Appeals and Review ("BAR"). In the appeal record, the District filed a number of documents that contained purportedly confidential attorney-client

communications between the D.C. Office of Corporation Counsel and officials with DCRA, OP, and the Zoning Department, concerning trial strategy in the Government's controversy with Respondents over the building permits. RX 229, 258, 261, 267, 273, 275, 276, 281, 282, 283, and 284. The District used this evidence to support the validity of its action to issue the November 13, 2002 Stop-Work Order.[15]

On an unspecified date prior to February 13, 2003, *see* RX 281, Respondents filed a lawsuit in the District of Columbia Superior Court, seeking court relief to allow them to proceed with their construction projects.

F. The Search Warrant

On March 27, 2003, the Government executed a search warrant to inspect the interior of the Property for suspected violations of the Construction Codes and the Act. The warrant was submitted to a judge of the Superior Court of the District of Columbia, and signed by the judge. The warrant authorized the Government to enter the Property to inspect for evidence of violations of the Building Construction Codes and the Act. The warrant did not authorize the seizure of any items within the Property.

The search warrant was executed by a number of Government officials with DCRA and OP, along with officers of the Metropolitan Police Department ("MPD"). Ms. Cherry, Plumbing Supervisor Denford Boney, and Construction Inspector Phillip Thomas were present. Ms. Cherry took photographs of the interior of the Property. PX 115 A-K.

[15] Mr. Scheuermann represented that the Government withdrew its action on the eve of the hearing before the BAR, because the Government contended that the Notice of Proposed Revocation superseded all prior actions.

The photographs depicted the following areas, as of March 27, 2003:

A - South wall, interior of second floor loft.

B - South wall from first floor, looking up to second floor loft.

C - Uncompleted bathroom of first floor.[16]

D - Same as C, with different view.

E - Same as C and D, showing sink and mirror.

F - First floor of garage area, looking up to second floor studio/loft.

G - From first floor, completed joists and went to second floor.

H - From kitchen, looking up to second floor.

I - Second floor, from garage area looking to area over kitchen.

J - From first floor, looking up to open area.

K - Exterior, from south side ground, looking up to an area over first floor bathroom.

Ms. Cherry observed a section of the area over the kitchen with a window, PX 115 K, that she believed to be out of compliance with all building permits; the evidence later showed that the window was not in the "mezzanine" area that was the subject of Permit B444341. Permit B444341 permitted construction of a loft over the kitchen, not to exceed 1/3 of the floor space below. Mr. Bello approved this permit application, subject to his requirement that no

[16] During her direct testimony, Ms. Cherry testified that PX 115 C, D and E depicted an uncompleted bathroom on the second floor, which was out of compliance with the building permits issued. However, on cross-examination, Ms. Cherry conceded that there was no commode depicted, and that these photographs actually were consistent with an uncompleted bathroom on the first floor, shown in RX 298 – plans submitted to the Government. Mr. Boney and Mr. Thomas also testified on direct to the same facts, but also changed their testimony on cross. All three witnesses ultimately concluded that the photographs depicted the first floor bathroom and that this construction was authorized by RX 249.

second floor could be added. No windows were depicted in the plans, RX 298, in that area, and no windows were in fact constructed in that area.

Mr. Thomas had inspected the Property on August 26, 2002, and approved the new construction. RX 251. On March 27, 2003, Mr. Thomas observed other construction that he had not approved, above the kitchen area: (1) new flooring for the second floor, PX 115 A and B; and (2) joists for the second floor, PX 115 H. He also observed a new area of the house that he believed was not on any plan. PX 115 J. At the time of the search warrant execution, Mr. Thomas had not reviewed Permit B444341; when shown this permit, he admitted he had not measured the improved area above the kitchen to compare it to the overall floor space. He also was unaware of plumbing and electrical permits. When shown these permits at the hearing, Mr. Thomas conceded that the construction work was in compliance with these permits.

Mr. Robbins later measured the improved area above the kitchen and the overall floor space of that section of the Property on the first floor. The first floor encompassed 426 square feet. The second floor included 140 square feet that was covered with plyboard and used for storage.[17] The remainder of the second story was used for storage, and therefore the entire 426 square feet constituted a "storage loft."

G. The Notice of Revocation

On December 17, 2003, the Government issued its Notice of Proposed Revocation, seeking revocation of Permit B436647, and Amended Permits B440371, B440544, B444341, B444561, and B446508. PX 113; RX 287. In essence, Charge I alleged that Respondents made

[17] The plans for Permit B444341 showed an improved area of 140 square feet. Mr. Robbins testified that he measured the area covered by plyboard and used for storage as 137 square feet. When Mr. Taylor asked him to draw on a blown-up copy of the plan for B44341 where the improved area was, Mr. Robbins marked an area that was 140 square feet. PX 103B.

false statements on their March 19, 2001, November 28, 2001, and April 26, 2002 applications; and Charge II alleged that Respondents' construction exceeded the scope of the permits issued and that Respondents had failed to timely comply with the May 17, 2002 NOV.

H. Summary of the Permits

The following chart shows the date and purpose for each permit at issue:

B436647	4/27/01	(1) replace roof; (2) replace fence; (3) install garage doors.
B440371	11/19/01	pour concrete slab to replace floor.
B440544	11/28/01	replace 10' of north wall, and 22'6" of south wall, with replacement walls to match original height and width.
B444341	3/8/02	remove flooring above future kitchen and convert to storage loft, not to exceed 1/3 of floor below.
B444561	4/26/02	Interior partition wall – nonstructural, provided mezzanine level will not severely impact the main level, if the court decides the roof must be lowered.
B446508	6/20/02	sister 2'x 6' joists to existing 2'x 6' roof joists.

I. Summary of Facts Applied to the Remaining Charges

A. Charge I – Specification B

On or about November 28, 2001, Respondents obtained Permit B440544, amending B436647, for construction of two replacement walls to match height and width of original walls. Respondents did not fail to disclose their demolition plans because there were no demolition plans. Respondents did not apply for a demolition permit, and the Government did not request them to do so. The Government did issue a stop-work order to require Respondents to show their plans to replace the exterior walls; in response, Respondents filed their application for

Permit B440544. The Government lifted the stop-work order and did not require any demolition permit or other permits.

The changes to the height and width of the replacement walls were disclosed in Respondents' architectural drawings submitted with the application for Permit B436647, although these drawings did not include elevations or references to dimensions in feet and inches. Respondents did not provide architectural drawings with their application for Permit B440544. Notwithstanding the problems regarding architectural drawings, the Government approved both applications (B436647 and B440544). However, in September 2002, Respondents corrected the omissions (in response to the NOV and the HPRB staff report) by providing supplemental drawings, with elevations and dimensions included, in accordance with the Government's requests.

The condition placed in Permit B440544 by OP/HPO that the replacement walls must match the "original height and width" of the walls was ambiguous. Respondents reasonably interpreted this condition to require compliance with their original architectural plan for B436647. This plan required a change in the height of the south wall to create a sloped roof. It would not be possible for Respondents to create the proposed sloped roof without adding height to the south wall.

B. Charge II

With regard to the demotion permit for replacement of the two exterior walls, Respondents did not demolish the south wall when it crumbled. They did not apply for a demolition permit prior to replacing the south and north walls, nor did the Government require them to do so. It was the practice of DCRA at that time that an inspector could and often did

waive certain requirements; this occurred in late 2001 when Respondents applied for Permit 440544.

With regard to compliance with Permit B444341, the permit permitted Respondents to construct a storage loft on the second or mezzanine level not to exceed one-third of the floor space below. Respondents placed plyboard over an area on the mezzanine level that encompassed 140 square feet. However, they used all of the other floor space for storage. Therefore the entire second level of 426 square feet was used as a storage loft, in violation of Permit B444341.[18]

As to the issue of compliance with the NOV issued on May 17, 2002, Respondents complied with the NOV in every respect except that they did not file a new permit application to show all of their construction work. Respondents were not properly notified of their right to appeal the NOV. The alleged violation that formed the basis for the NOV, that Respondents had improperly answered Question 60 on their initial permit application, was not sustained by the record. While Respondents did not answer the question correctly, the answer did not form any basis for the decision by Government officials to issue Permit 436647.

I find that the NOV was validly issued and had legal effect, notwithstanding the failure to advise Respondents of their appeal rights.[19] Further, Respondents violated it in part by not

[18] The evidence did not ultimately show that the window in dispute was located in the space over the kitchen. However, in light of Mr. Robbins's admission that Respondents used the entire mezzanine level for storage, this factual issue is moot. Respondents' position that only the area covered by plyboard should be counted is not supportable, since the permit used the term, "storage loft."

[19] The effect of the failure to provide appeal rights is that I have independently reviewed the underlying basis for the NOV. I disagree with Respondents that the NOV is null and void, but I am considering the fact that the NOV's allegations lack support in the record in determining whether Respondents' failure to fully comply with the NOV is a basis for revoking the six building permits.

submitting a new application showing all of their construction plans. However, the alleged violations that supported the issuance of the NOV were not sustained by the record.

V. Conclusions of Law

The Government seeks to revoke the various building permits issued to Respondents in this case, pursuant to then-12 DCMR 108.9 (1999 ed.), which provided in pertinent part:

> Revocation of Permits. The code official is authorized to revoke a permit or approval issued under the Construction Codes, for any of the following conditions:
>
> 1. Where there is a false statement or misrepresentation of fact in the application or on the plans on which a permit or approval was based, that substantively affected the approval; and
>
> 2. When the construction does not comply, pursuant to Section 111.0, with the Construction Codes, the permit, the revised permit, or the approved plans and other information filed to obtain the permit and when the permit holder fails to correct the non-conforming situation within the time period specified in a notice or order issued under Section 116.0[.]

With regard to the charges that have already been dismissed, I adopt by reference and incorporate the findings of fact and conclusions of law set forth in the Order on Motion to Dismiss, and the Order on Remainder of Motion to Dismiss, previously issued.

With regard to the remaining charges, the Government argues that it has met its burden of proof and that its proposed revocation of the six building permits should be upheld. The Government's other arguments are specifically tailored to the remaining charges, and I will address these arguments as they apply.

Respondents make specific arguments as to the charges, which I will discuss later. Respondents also interpose two general defenses or motions: (1) that they are entitled to affirmative relief because the possession of a building permit is a valuable property right that the law has an obligation to protect, particularly when work has begun in reasonable reliance upon the permit; and (2) that the Government's contentions in this case, that the permits were improperly issued or were not complied with, are barred by the doctrines of *res judicata, collateral estoppel,* and/or *judicial estoppel*, based upon the proceedings in the Stevens case, discussed above in the Findings of Fact.

I will discuss first the specific charges, then the general arguments advanced by Respondents, and finally the appropriate remedy or disposition.

A. Charge I – Specification B – Fraudulent Application for Permit B440544

As to Charge I – Specification B, as applied to the replacement of the exterior walls, the Government contends that Permit B440544 was an amendment to Permit 436647; therefore, the condition imposed as to the height of the walls (to match original heights) means that Respondents must replace the southern wall as it existed when it crumbled and not as it was shown in their application for Permit B436647. The Government notes that Respondents had not completed their work on the initial permit when they applied for Permit B440544, and therefore the conditions imposed by Permit B440544 superseded the provisions of the original permit. The Government did not specifically address the issue of fraud.

Respondents' defense is twofold: First, they assert that their position that the replacement of the southern wall complied with Permit B440544 is supported by the record. Second, they

contend that Respondents did not ever mislead Mr. Young with regard to either Permit B436647 or B440544, and therefore the charge should be dismissed.

Section 108.9(1) requires proof of two elements: (1) that Respondents made a false statement or misrepresentation in their application for a building permit; and (2) that the false statement or misrepresentation substantively affected the approval of the permit application. This language is consistent with case law in the District holding that proof of fraud or material misrepresentation requires proof of both an intentional false statement, and detrimental reliance upon that false statement. *See, e.g., Rodriguez v. DOES,* 452 A.2d 1170, 1172 (D.C. 1982) (unemployment insurance); *Howard v. Riggs National Bank,* 432 A.2d 701, 706 (D.C. 1981) (tort of fraudulent misrepresentation).

The record does not contain any evidence as to either element: that Respondents misled the Government about their intention to replace the two exterior walls, or that there was reliance upon any false statements. Therefore, Charge I – Specification B shall be dismissed as it applies to the application for this permit.

The second aspect to this issue is whether Respondents failed to disclose their demolition plans and failed to apply for a demolition permit. The record contained some speculation by Respondents' neighbors and by Mr. Maloney that Respondents may have demolished the southern wall during their initial construction. Ultimately, this fact was never proven, and I have found that the wall fell during construction, as Respondents have asserted. Indeed, the Government did not address the demolition issue at all in its closing argument.

The question remains whether Respondents were required to obtain a demolition permit even if the wall had crumbled and they intended to replace the wall. Respondents concede that

the Building Code regulations may require this. *See* 12A DCMR 105.1.6 (circumstances where a partial demolition permit is required). However, they counter that the Government did not detrimentally rely upon the lack of a demolition permit, because: (1) Respondents immediately applied for two permits, B440371 [cement slab] and B440544 [replacement walls], to address structural problems caused by the wall collapse, thereby giving notice of their proposed construction work to the Government; (2) the Government did not then or at any point require Respondents to obtain a demolition permit; and (3) it was the practice of DCRA at that time to give discretion to code officials to waive certain requirements as appropriate.

I agree with Respondents' argument. Although Respondents did not apply for Permit B440544 until a stop-work order had been issued, the point remains that they did file this application. The evidence shows that the Government was never misled or prejudiced by Respondents' failure to obtain a demolition permit. Therefore, in all aspects, Charge I – Specification B must be dismissed.

B. Charge II – Noncompliance with Permit B440544

The Government avers that Respondents failed to comply with Permit B440544 by constructing a southern wall that was higher than its original height before it collapsed. The Government cites 12A DCMR 105.3.3 for the proposition that, where the holder of a valid active building permit files an application to amend the permit before the work has been completed, the amended permit is deemed to be part of the original permit and therefore supersedes the original. The Government assumes as fact that Permit B440544 required Respondents to construct walls that matched the height of the original walls as they existed and not as they were represented in the original permit application plans.

I agree with the Government that, in order to construct a sloped roof under Permit B436647, Respondents were required to raise the height of the southern wall, as reflected in their original plans; in this sense, Mr. Maloney's testimony was more persuasive than that of Mr. Ford. Where I disagree with the Government is its contention that the condition placed by OP/HPO in Permit B440544 is unambiguous on its face. The term, "original height," could also refer to the original height allowed by Permit B436647. In order to give it the construction urged by the Government, the condition would render Permit B436647 null and void (at least in its most important feature), as it would be impossible for Respondents to build a sloped roof with the southern side raised, unless the southern wall was raised to match the height of the roof.

Respondents take the position that it is unnecessary for the administrative law judge to reconcile the two views of this condition. I disagree with this position as well. In order to determine whether Respondents complied with the condition, I must determine what the condition means or at least what was communicated to Respondents as to its meaning.

Mr. Maloney testified that the condition was intended to require a 10' in height southern wall, expressly to eliminate the sloped roof feature contained in the application for the initial permit. Mr. Ford testified to the contrary, that the condition was intended to allow the sloped roof as described in the initial application. I conclude that Respondents honestly and reasonably were on notice that Permit B440544 allowed them to construct a sloped roof, with a raised southern wall, because: (1) the condition was patently ambiguous and was drafted by the Government; (2) Respondents were advised by Government officials that the condition allowed the sloped roof; and (3) this is the only way the term could be construed that would reconcile the condition with the primary purpose for the initial permit. For the Government to take the drastic

step of revoking its approval for a project already approved, it must communicate this intention more clearly than this.

I note that § 105.3.3 provides that the revision "shall be deemed part of the original permit," and this implies that the permit and the revision must be construed together. Based on Respondents' reasonable interpretation of the condition, their construction work complied with its requirements.

C. Charge II – Noncompliance with Permit B444341

Permit B444341 allowed Respondents to construct a storage loft at the "mezzanine" level over the kitchen "not to exceed 1/3 of the floor space below." The issue as to compliance with this permit goes to the very heart of the overall dispute. The basis for Mr. Bello and other officials to approve the original project was that the project would not add a second story to the rear sections of the house. Such an addition would require Zoning Board approval. In addition, the construction of a second story would unquestionably violate the Act, as it would not be in compliance with the CHRS standards for the historic district.

The Government argues several theories as to why Respondents have converted more than one-third of the floor space in this area to use as a storage loft. Respondents counter that, since Mr. Robbins measured the area covered by plyboard in the unfinished mezzanine, and that area did not exceed one-third of the floor space of the kitchen below, Respondents complied with this permit. They note that Mr. Thomas, the inspector, did not measure these areas.

I conclude that the Government has proven this violation for a very simple reason: Respondents did in fact use the entire "mezzanine" area for storage, and therefore this space constituted a "storage loft."

The record shows that, while the Zoning Administrator approved the proposal to install a sloped roof, the Zoning Administrator never intended to allow a second story over the kitchen area or the garage/studio area of the Property. Under 11 DCMR 199, a "mezzanine" is defined as,

> A floor space within a story between its floor and the floor or roof next above it and having an area of not more than one-third (1/3) of the area of the floor immediately below. A mezzanine shall not be considered a story in determining the maximum number of permitted stories.

I agree with the Government that it is immaterial whether Respondents have constructed flooring on the area in question. By using the entire area for storage, they have turned it into a "storage loft" that covers an area equal to the entire floor space below. This is not in compliance with Permit B444341.

D. Charge II – Noncompliance with the NOV

I have found that the May 17, 2002 NOV was validly issued and never withdrawn by the Government, although its author, Mr. Ford, now believes it to be without merit. Further, I have found that the NOV did not include written appeal rights, and that the Government not only failed to orally advise Respondents of their appeal rights but also inaccurately advised them that they could not appeal the NOV. Finally, I have found that Respondents complied in part with the NOV by providing additional drawings and information requested by the Government, but

they did not comply in part because they never submitted a new building permit application for their entire construction project.

Because Respondents were in effect denied an opportunity to seek review of the NOV, I have independently reviewed the factual allegations contained in the NOV to consider whether the allegations are supported by the evidentiary record. The allegation of wrongdoing on the part of Respondents is that they provided a false answer to Question 60 on the initial application for Permit B436647, by stating that there would be no change in the volume of the building caused by their proposed renovation. As stated above, this factual predicate for the NOV is without merit for several reasons: (1) Respondents relied on advice from Government officials in completing the form and were told that this question referred to new construction; (2) there was no evidence that Respondents attempted to deceive the Government about the nature of their project; and (3) the Government officials who reviewed the initial application relied upon the drawings they submitted, and they did not rely upon the answer to Question 60 in approving the plans.

Consequently, I conclude that Respondents did in fact fail to comply with the requirements of the NOV by failing to submit a new building permit application. However, based on the entire record, and as I will discuss more fully in the next section, this failure to comply is not a reasonable basis for revoking all of the building permits issued to Respondents. By the time the NOV had been issued, Respondents had already performed most of the work on the permits, all of which had been approved by all of the necessary agencies. The allegation of wrongdoing contained in the NOV is not factually supported. The requirement to submit a new application at that late date was not appropriate, even though the requirement might have been appropriate if the requirement had been imposed in a timely manner.

E. Detrimental Reliance upon Vested Property Right

Respondents next argue as a general matter that "once a building permit has been issued, and work has begun under and in reliance upon that permit, the Government is permitted to revoke that permit only for the limited reasons contained in Title 12A D.C.M.R. Section 108.9 (1999)." Respondents cite the following language contained in the case, *3883 Connecticut LLC v. District of Columbia,* 336 F.3d 1068, 1072-73, 357 U.S.App.D.C. 396, 401-02 (D.C.Cir. 2003):

> In adopting the analytical approach of *Gardner* and similar cases, however, the district court overlooked a critical distinction between those cases and this one – namely, in those cases the question was whether an *applicant* for a permit had a property interest therein … while we must determine whether the permit holder has "more than a unilateral expectation' in the permit's *continued effect* … Sections 108.9 and 117.1 of the Construction Codes, respectively, define District authorities' discretion to revoke and suspend permits through a stop work order … An examination of these two sections reveals that discretion to terminate or suspend work already allowed by the permits is substantially limited … We believe both of these provisions indicate that [a permit holder] has a property interest in the continued effect of [his] permits. Revocation is limited to the five circumstances listed [in Section 108.9] and issuance of a [Stop Work Order] depends on whether work is performed contrary to the provisions of the Construction Codes or unsafely … Discretion is not unfettered … but instead is constrained sufficiently to give [a permit holder] an expectation in the continued effect of the permits – and therefore a property interest in them. [emphasis in original]

Respondents posit that, since they were granted six building permits and commenced work based upon those permits, the Government's proposed revocation of those permits can only be upheld based on the limited grounds stated in § 108.9 and must be strictly scrutinized.

Respondents do not precisely advance an argument of estoppel, but this argument is akin to an equitable estoppel argument.[20] Respondents are stating in effect: (1) we have a property

[20] This concept is in contrast to Respondents' later collateral estoppel and judicial estoppel arguments.

interest in the building permits; and (2) in detrimental and reasonable reliance upon those permits, we have incurred costs. Therefore, as a matter of equity, the Government should not be permitted, or at least should not easily be permitted, to revoke the permits.

In *DCRA v. Vu & Camacho,* OAH Case No. CR-C-06-100009 (Memorandum Order on Motion for Summary Judgment, October 16, 2006),[21] this administrative court addressed similar arguments raised by building permit holders in an action to revoke their permits. In that case, in essence, the respondents obtained building permits to construct a house on their property, and DCRA (and the other required agencies) issued building permits allowing this construction. However, before issuing the permits, DCRA had failed to refer the building plans to the United States Commission of Fine Arts ("CFA"), under the Shipstead-Luce Act, D.C. Official Code §§ 6-611.01 *et seq.*, as required for that property. In reliance upon the permits, the respondents invested over $1,000,000 in construction work and completed construction of the building. More than five months after discovering its error, DCRA finally referred the building plans to the CFA, which recommended that the application be denied or the permits revoked. This administrative court granted summary decision in favor of Respondents.

The issue raised was whether DCRA was equitably estopped from revoking the permits. The *Vu & Camacho* decision addressed the doctrine of equitable estoppel, as applied against a governmental entity, as follows:

> It is true that "[t]he doctrine of equitable estoppel is judicially disfavored in zoning cases because of the important public interest in the integrity and enforcement of zoning regulations." *Internato v. D.C. Board of Zoning Adjustment*, 429 A. 2d 1000, 1003 (D.C. 1981) (citations omitted). However, although the doctrine is judicially disfavored, "the fundamental principle of

[21] All cases in this opinion without a LEXIS citation are being transmitted to LEXIS (www.lexis.com) for publication in the District of Columbia Office of Administrative Hearings database.

> equitable estoppel applies to government agencies, as well as private parties." *Investors Research Corp. v. SEC*, 628 F. 2d 168, 174 n.34 (D.C. Cir. 1980) (citing 2 K. DAVIS, ADMINISTRATIVE LAW TREATISE §§ 17.01-17.04 (1958 & Supp. 1980). "[T]he 'sovereign' nature of an agency's action does not immunize the agency from the reach of equity." *ATC Petroleum, Inc. v. Sanders*, 860 F.2d 1104, 1113 (D.C. Cir. 1988) (citation omitted). Consequently, "[a]lthough the doctrine of equitable estoppel has traditionally not been favored when sought to be applied against a government entity … it is accepted that in certain circumstances an estoppel may be raised to prevent enforcement of municipal zoning ordinances." *Saah v. D.C. Board of Zoning Adjustment*, 433 A.2d 1114, 1116 (D.C. 1981) (citations omitted). *See also District of Columbia v. Cahill*, 60 App. D.C. 342, 54 F.2d 453 (D.C. 1931) (Where a party acting in good faith under affirmative acts of a city has made such expensive and permanent improvement that it would be highly inequitable and unjust to destroy the rights acquired, the doctrine of equitable estoppel will be applied).
>
> The Court of Appeals has recently reiterated its view that to succeed on a claim for estoppel regarding a government entity's decision on whether to issue a building permit, a party must make a six-part showing: (1) expensive and permanent improvements; (2) made in good faith; (3) in justifiable and reasonable reliance upon: (4) affirmative acts of the District Government; (5) without notice that the improvements might violate the zoning regulations; and (6) equities that strongly favor the petitioner. *Bannum, Inc. v. D.C. Board of Zoning Adjustment*, 894 A.2d 423, 431 (D.C. 2006). Also, the Court of Appeals has affirmed the disposition of an equitable estoppel claim on summary judgment. *American Century Mortgage Investors v. Unionamerica Mortgage and Equity Trust*, 355 A. 2d 563 (D.C. 1976).

Vu & Camacho, at 9-10.

Although Respondents attack the issue from a slightly different point-of-view, the analysis of this issue requires a balancing of the equities between the parties. Therefore, in determining whether Respondents have detrimentally relied upon the vesting of their property interest, I will address the six factors set forth above in the *Bannum* case.

(1) Expensive and permanent improvements – Respondents have spent over $70,000 on improvements based upon the six building permits at issue. It is not clear how much of that expense was incurred prior to December 2003, when the Notice of Proposed Revocation was

issued. In all likelihood, most of the work had been performed prior to then, and even prior to May 17, 2002, when the NOV was issued.

(2) Made in good faith – At the time of their initial application, Respondents were aware that their proposed construction projects posed possible violations of the Act and of the zoning for the Property. Respondents, however, did tailor their project to meet the concerns and requirements expressed by Mr. Bello and other agency officials. Although the Government has alleged fraud in the applications for several permits, none of those allegations have been sustained by the record. There were some deficiencies in the plans submitted, but the plans accurately showed the proposed construction and there was no evidence of any intent to deceive Government officials about the nature of the construction projects. The Government agencies approved the permits in reliance upon the plans and applications submitted. Respondents reasonably believed that the permits granted them the right to perform the construction work stated in the permits. I have found that Respondents reasonably interpreted Permit B440544 as allowing the construction of the sloped roof approved in Permit B436647.

(3) and (4) In justifiable and reasonable reliance upon the acts of the Government – The Government approved every one of these permit applications, and every agency required to review the applications approved them. However, beginning in the spring of 2002, various Government officials (Mr. Maloney, Mr. Ford, Mr. Noble, the HPRB, and Mr. Clarke) began to make demands of Respondents that they submit a new application for one building permit to include all of the construction work. At the same time, the Government allied itself with Respondents in the lawsuit filed by Mr. Stevens and advocated the position that the applications and permits issued by the spring of 2002 were lawful.

The question is then presented, how reasonable was it for Respondents to rely on the Government's issuance of permits, when so many stop-work orders were being issued and letters demanding a new building permit application were being sent. The reasonableness of the reliance turns on when the Government began to question the projects.

The record shows that no serious Government opposition to the projects was communicated to Respondents until spring 2002, aside from some stop-work orders that were effectively addressed. By the spring of 2002, Respondents had invested substantial work in reliance on the permits (at least the first three permits).

(5) Without notice that the project violated zoning requirements – This factor favors the Government in that Respondents were aware from the outset that the project faced potential obstacles from zoning and historical preservation standpoints. However, Respondents also modified their plans based on the potential obstacles and the Government approved the plans. This factor is ultimately neutral.

(6) The equities strongly favor Respondents - As I have reviewed the large body of evidence and testimony in this case, the most salient feature for me has been that there are equities on both sides of the case. On one hand, I agree with Mr. Maloney's point that the construction of a sloped roof of the dimension proposed by Respondents had a potential impact on the historical neighborhood. The neighbors' concerns about the impact of the construction on the neighborhood and on their access to sunlight and similar factors, were legitimate concerns. If the Government had denied the initial application on this basis, Respondents would have had a difficult road trying to overcome the objections to their project.

On the other hand, the concerns were known at the time Respondents initially applied for a building permit, and the Government did approve all of the permits notwithstanding the concerns. Respondents endured a nightmare situation in which the Government officials dueled amongst themselves over the propriety of the project, and they sent out mixed messages. Meanwhile, Respondents have been effectively blocked from completing their work until the matter has been fully litigated.

Because Respondents had justification for relying on the permits that were validly issued, the equities overall strongly favor Respondents. In fact, the delay in taking adverse action here was longer than it was in the *Vu/Camacho* case discussed above. This was a situation where the Government failed to act on their concerns until significant damage had been done, and significant costs expended.

F. Res Judicata, Collateral Estoppel and/or Judicial Estoppel

Respondents' final argument is that the Government should be barred from re-litigating issues of fraudulent applications and noncompliance with the permits, based upon the Government's position in the *Stevens* matters and the Superior Court's dismissal with prejudice of those cases. I will not address these arguments in detail, because I am granting substantial relief to Respondents on other grounds.

The problem with Respondents' argument is threefold: (1) the parties to the Superior Court actions, *Stevens v. DCRA,* and *Stevens v. Respondents*, are not the same as the parties to this case, *DCRA v. Respondents*; (2) only some of the issues here were under consideration in *Stevens,* and not all of the issues accruing prior to the filing of the *Stevens* case were under consideration in that case; and (3) the Notice of Proposed Revocation was issued in December

2003, and the *Stevens* matters could not have resolved any issue accruing between the dismissal date in 2002, and the date of the Notice of Proposed Revocation one and one-half years later.

G. Ultimate Remedy

In summary, the Government has alleged violations of § 108.9(1) – fraud in the applications under Charge I; and § 108.9(2) – noncompliance with the permits and the NOV. I have dismissed all of the charges alleging fraud in the applications for permits, set forth in Charge I. I have also dismissed most of the charges alleging non-compliance with the permits, set forth in Charge II. The charges that have been sustained are: (1) that Respondents violated Permit B444341 by constructing a storage loft more than one-third of the floor space below; and (2) that Respondents violated the NOV in part, by failing to submit a new permit application for the entire project.

Permit B444341 was issued in March 2002, long after the projects had begun. By that time, Respondents had invested a considerable amount in performing construction under the three permits already issued. After considering the entire record, the appropriate remedy for this violation is not the revocation of all building permits issued before and after that date.

Since the parties have stated that the prior notices of action issued by the Government were consolidated into the Notice of Proposed Revocation, it is appropriate to consider other relief. I will therefore order Respondents to come into compliance with Permit B444341 within a reasonable time not to exceed forty-five (45) days. In complying with this Order, the Government officials and Respondents shall confer and agree on a plan.[22]

[22] For example, the construction of a wall in the "mezzanine" enclosing a storage space that is less than one-third of the floor space of the kitchen below is a method of compliance. However, I will leave to the parties to construct their own plan.

With regard to the failure of Respondents to submit a new building application in response to the May 17, 2002 NOV, no relief will be ordered. The NOV's requirement is not reasonable in light of the fact that the factual predicate for the NOV is not supported and the fact that Respondents have detrimentally relied upon their validly issued building permits.

VI. Order

Therefore, upon consideration of foregoing findings of fact and conclusions of law, and the entire record of this case, it is, this _____ day of _____, 2007:

ORDERED, that Charge I of the Notice of Proposed Revocation is **DISMISSED** in its entirety; and it is further

ORDERED, that Charge II of the Notice of Proposed Revocation is **UPHELD IN PART AND DISMISSED IN PART.** Charge II is **DISMISSED** as to all allegations except that: (1) Respondents installed on the second floor a storage loft exceeding one-third of the floor space below, in violation of Permit B444341; and (2) Respondents violated the May 17, 2002 Notice of Violation in part, by failing to submit a new building permit application to show all of their construction projects; and it is further

ORDERED, that the Government's Proposed Revocation of Building Permits B436647, B440371, B440544, B444341, B444561, and B446508, issued to Respondents, is **DENIED AND DISMISSED**; and it is further

ORDERED, that Respondents shall come into compliance with Permit B444341 within a reasonable time not to exceed forty-five (45) days. In complying with this Order, the Government officials and Respondents shall confer and agree on a compliance plan. If the

parties cannot agree on a compliance plan, or if Respondents need additional time to perform this plan, they may file an appropriate request with this administrative court for relief; and it is further

ORDERED, that the appeal rights of any party aggrieved by this Order are stated below.

March 21, 2007

/s/

Paul B. Handy
Administrative Law Judge

APPENDIX – LIST OF DOCUMENTS

A. Motion to Suppress

At the hearing on Respondent's Motion to Suppress Evidence, held on November 4, 2005, the following exhibits were admitted into evidence, solely for purposes of this Motion:

1. The Government's Exhibits

PX 1 - Application for Administrative Search Warrant, 3/26/03
PX 2 - Receipt for return of notebook, 4/15/03
PX 3 - Memorandum of Agreement between DCRA and OP, 5/17/01

2. Respondents' Exhibits

RX 1 - Letter from Denzil Noble, Acting Administrator of BLRA to Respondents, 3/10/03
RX 2 - Letter from Mr. Scheuermann to Mr. Saindon, 3/14/03
RX 3 - Statement of Facts in Support of Affidavit – Search Warrant Application, 3/26/03
RX 4 - Search Warrant, 3/26/03, and Return, 3/31/03
RX 5 - District of Columbia Superior Court Statement – No Civil Actions, 5/28/04
RX 6 - Text of U.S. Const. amend. IV [not admitted]
RX 7 - Text of Superior Court Rule 204 [not admitted]
RX 8 - Text of D.C. Construction Codes § 113.4
RX 9 A-Q - 18 photographs taken by Ms. Elkins at the Property, 3/27/03

B. Evidentiary Hearing

At the evidentiary hearing held on May 23 and 24, 2006 (Government's case-in-chief), and on November 29 and 30, 2006 (Respondents' case and Government's rebuttal), the following exhibits were admitted into evidence:

1. The Government's Exhibits

PX 101 - Landtech – Location Survey
PX 102 - Building Permit B436647
PX 102A - Supplement to Building Permit B436647
PX 102B - Enlargement of Drawing – B436647

PX 103 - Building Permit B443341
PX 103A - Enlargement of Drawing #1 – B443341
PX 103B - Enlargement of Drawing #2 – B443341
PX 104 - Building Permit B440371
PX 105 - Building Permit B444561
PX 105A - Enlargement of Drawing – B444561
PX 106 - Building Permit B446508
PX 107 - Stop Work Order, 1/17/02
PX 108 - Stop Work Order, 4/9/02
PX 109 - Stop Work Order, 4/24/02
PX 110 - Stop Work Order, 11/13/02
PX 111 - Notice of Violation, 5/17/02
PX 112 - Letter from David Clark to Respondents, 12/23/02
PX 113 - Notice of Proposed Revocation, 12/17/03
PX 114 - HPRB Hearing Transcript, 9/26/02
PX 115 A-K - 11 photographs taken by Ms. Cherry at the Property, 3/27/03
PX 116 - Email from Mr. Maloney to various persons, 1/22/02 to 2/4/02
PX 117 - Permit Application for B440544, 11/27/01

2. Respondents' Exhibits

RX 201 - Permit Application, 3/20/01
RX 202 - Environmental Questionnaire, 3/19/01
RX 203 - DCRA Fee Schedule Alterations
RX 204 - Cancelled Check/Receipt, 3/22/01
RX 205 - Transmittal Letter – HPRB, 3/21/01
RX 206 - HPRB Filing Fee, 3/22/01
RX 207 - Home Occupation Permit, 4/17/01
RX 208 - Building Permit B436647
RX 209 - Letter from Mr. Stevens to Mr. Bello, 11/13/01
RX 210 - Permit Application for B440371, 11/19/01
RX 211 - Building Permit B440371
RX 212 - Stop Work Order, 11/27/01
RX 213 - Permit Application, 11/27/01
RX 214 - Building Permit B440544
RX 215 - Email from Mr. Stevens to Mr. Young, 11/29/01
RX 216 - Email from Mr. Stevens to Ms. Cherry, 12/7/01
RX 217 - Cancelled checks - various
RX 218 - Email from Mr. Young to Mr. Nettler, 12/14/01
RX 219 - Memo from Mr. Coburn to Mr. Boasberg et al., 1/21/02
RX 220 - Email from Mr. Coburn to Mr. Clark, 2/5/02
RX 221 - Letter from Mr. Hitchcock to Respondents, 2/15/02
RX 222 - Letter from Respondents to Mr. Clark, 2/28/02
RX 223 - Letter from Mr. Noble to Respondents, 3/5/02
RX 224 - Stop Work Order, 3/5/02
RX 225 - Memo from Ms. Elkins to Mr. Ford, 3/5/02

RX 226 - Building Permit B443341
RX 227 A-B - Photographs (not provided)[23]
RX 228 - Letter from Mr. Hitchcock to Mr. Love, 3/12/02
RX 229 - Email from Mr. Brennan to Mr. McCarthy, 3/18/02
RX 230 - Letter from Mr. Robbins to Mr. Maloney, 3/25/02
RX 231 - Letter from Mr. Robbins to Mr. Maloney, 3/27/02
RX 232 - HPRB Staff Report, 3/28/02
RX 233 - HPRB Directive, 3/28/02
RX 234 - Memo from Mr. Maloney to Mr. Love, 4/3/02
RX 235 - Email from Mr. Maloney to Mr. Robbins, 4/4/02
RX 236 - Stop Work Order, 4/9/02
RX 237 - Stop Work Order, 4/24/02
RX 238 - Permit Application for B444561, 4/25/02
RX 239 - Building Permit 444561
RX 240 - Fact Sheet, stamped 4/29/03
RX 241 - Notice of Violation, 5/17/02
RX 242 - Letter from Mr. Edwards to Mr. Clark, 5/24/02
RX 243 - Fact Sheet, updated 5/30/02
RX 244 - Fact Sheet #2, 5/30/02
RX 245 - Memo from Respondents to Mr. Ford, 6/14/02
RX 246 - Building Permit B446508
RX 247 - Memo from Mr. Robbins to Mr. Ford, 7/3/02
RX 248 - Electrical Permit EL37110
RX 249 - Plumbing Permit PLBG3726
RX 250 - Air Conditioning Permit AC39736
RX 251 - Final Inspection Approval, 8/26/02
RX 252 - Letter from Mr. Robbins to Mr. Ford, 9/16/02
RX 253 - Letter from Mr. Robbins to Mr. Maloney, 9/16/02
RX 254 - Plans & Drawings, 9/16/02 (provided as a supplement)
RX 255 - HPRB Staff Report, 9/16/02
RX 256 - Ms. Elkins' Response, 9/16/02
RX 257 - Washington Post article, 9/27/02
RX 258 - Email from Mr. Brennan to Mr. Lewis et al., 10/28/02
RX 259 - Stop Work Order, 10/30/02
RX 260 - Letter from Respondents to Mr. Ford, 11/5/02
RX 261 - Email from Mr. Lewis to Mr. Noble, 11/6/02
RX 262 - Stop Work Order, 11/13/02
RX 263 - Memo from Respondents to Mr. Ford, 11/13/02
RX 264 - Memo from Ms. Elkins to Mr. Ford, 11/15/02
RX 265 - Letter from Mr. Ford to Respondents, 11/15/02
RX 266 - Letter from Mr. Noble to Respondents, 11/15/02
RX 267 - Letter from Mr. Collins to Mr. Saindon, 11/18/02
RX 268 - Email from Mr. Robbins to Mr. Moy et al., 11/20/02
RX 269 - Letter from Mr. Robbins to Mr. Moy et al., 11/20/02

[23] Respondents listed this document in their exhibit list, but initially did not provide a copy of the exhibit. A copy was provided on November 29, 2006.

RX 270 - Letter from Ms. Elkins to Mr. Clark, 11/22/02
RX 271 - Letter from Ms. Elkins to Mr. Noble, 11/22/02
RX 272 - Memo from Ms. Elkins to Mr. Ford, 11/22/02
RX 273 - Letter from Mr. Collins to Mr. Saindon, 11/22/02
RX 274 - Appeal Request, 11/22/02
RX 275 - Email from Mr. McCarthy to Mr. Saindon, 11/26/02
RX 276 - Letter from Mr. Collins to Mr. Brennan, 12/11/02
RX 277 - Memo from Program Managers to Director, National Park Service, 12/11/02
RX 278 - Memo from Mr. Lee to Mr. Mainella, 12/11/02
RX 279 - Draft letter from Mr. Noble to Ms. Elkins, 12/18/02
RX 280 - Letter from Mr. Clark to Ms. Elkins, 12/23/02
RX 281 - Email from Mr. Saindon to Mr. Maloney, 2/13/03
RX 282 - Email from Mr. Maloney to Mr. Saindon, 2/14/03
RX 283 - Email from Mr. Brennan to Mr. Moy, 3/14/03
RX 284 - Email from Mr. Moy to Mr. Bennett, 3/18/03
RX 285 - Draft Search Warrant Affidavit
RX 286 - Letter from Mr. Noble to Mr. Scheuermann, 8/1/03
RX 287 - Notice of Proposed Revocation, 12/17/03
RX 288 - Affidavit of Mr. Ford, 2/4/04
RX 289 - Affidavit of Mr. Bello, 2/17/04
RX 290 - Stevens v. Williams – Memoranda, etc.
RX 291 - Capitol Hill Restoration Newsletter p. 5
RX 292 - Landtech – Location Survey
RX 293 - Plat
RX 294 - Plans & Drawings #1
RX 295 - Plans & Drawings #2
RX 296 - Plans & Drawings #3
RX 297 - Plans & Drawings – Roof 3/30/01
RX 298 - Revised Plans, 3/6/02
RX 298A - Plans & Drawings for Revised Plans, 3/6/02
RX 299 - Approved Plans, 4/26/02
RX 300 - 2 photographs – front, 4/00
RX 301 - Photograph, 6/00
RX 302 - 2 photographs – front/rear, 6/00
RX 303 - 2 photographs – old roof/front, 6/00
RX 304 - 2 photographs, 6/00
RX 305 - 2 photographs, 6/00
RX 306 - (exhibit number not used for any exhibit)
RX 307 - 2 photographs, undated
RX 308 - 2 photographs, 11/01
RX 309 - 2 photographs, 11/01
RX 310 - 2 photographs, 11/01
RX 311 - 2 photographs, 11/01
RX 312 - 2 photographs, 12/01
RX 313 - 2 photographs, 1/17/02

RX 314 - 2 photographs, 1/17/02
RX 315 - Photograph, 1/17/02
RX 316 - 2 photographs, 1/17/02
RX 317 - 2 photographs, 1/17/02
RX 318 - 2 photographs, 1/17/02
RX 319 - 2 photographs, 1/17/02
RX 320 - 2 photographs, 1/17/02
RX 321 - 2 photographs, 1/17/02
RX 322 - 2 photographs, 1/17/02
RX 323 - 2 photographs, 5/16/02
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RX 327 - 2 photographs, 5/16/02
RX 328 - 2 photographs, 5/16/02
RX 329 - 2 photographs, 5/16/02
RX 330 - 2 photographs, 5/16/02
RX 331 - Photograph, 5/16/02
RX 332 - 2 photographs, 5/16/02
RX 333 - 2 photographs, undated
RX 334 - Photograph, 9/9/02
RX 335 - 2 photographs, 9/9/02
RX 336 - 2 photographs, undated
RX 337 - (exhibit number not used for any exhibit)
RX 338 A-M - 13 photographs, 3/03
RX 339 A-Q - 18 photographs, 12/03

3. Joint Exhibits

JX 400 - Government I.D. for Ms. Cherry - #32371
JX 401 - Mayor's Order 2002-5, 2/11/02
JX 402 - MOA, 1/11/02
JX 403 - Business card for Ms. Cherry
JX 404 - MOA, 5/17/02